IN THE HIGH COURT OF UTTARANCHAL,
NAINITAL.

Writ Petition No.5267 (S/S) 2001.
(OLD NO. 21221 OF 1995.

National Institute for the Visually Handicapped, 116, Rajpur Road, Dehradun through its Director.

... Petitioner.

Versus

1. State of U.P. through Collector, Dehradun.
2. Presiding Officer, Labour Court, Dehradun.
3. Sri Sabir Ali, S/o Sri Nazir Ali, R/o 43/3, Gandhi Road, Inamullah Building, Dehradun.

... Respondents

Sri P.C. Jhingan, learned counsel for the petitioner.
Learned Standing Counsel for respondents no.1 and 2.

27.09.2005.

HON'BLE P.C. VERMA, J.

By means of this petition the petitioner has challenged the impugned order dated 13.02.1995 passed by the Presiding Officer, Labour Court, Dehradun, holding respondent no. 3 to be workman of the petitioner and directed the reinstatement of the workman in service with 50% back wages and Rs. 200/- expenses towards litigation.

A dispute was referred vide notification No.13706-11-1/36(shram) C.P.-89 dated 24.08.1990 which was registered as Industrial Dispute No. 140 of 1990. The reference was made to the following manner:

"Whether the termination of services of Sri Sabit Ali son of Sri Nazir Ali, Electrician/workman by the employers with effect from 12.06.1986 is unjustified and illegal? If so, to what benefit/relief the applicant/workman is entitled to and what extent?"

Brief facts of the case are that the respondent no.3 was working on the post of electrician since January, 1984 upto 27.05.1986 in the Department of the employer but his services were terminated on 12.06.1986 in violation of provision of Section 6N of the U.P. Industrial Disputes Act, 1947. The Labour Court issued the notices to both the parties and after considering the muster roll and other evidence on record, found that the respondent no.3 had completed 240 days in a calendar year and, therefore, ordered for reinstatement being a daily wager employee with 50% back wages and further awarded Rs. 200/- as expenses towards litigation. Being aggrieved by the order of Labour Court, the petitioner has preferred the president writ petition.

I have heard learned counsel for the parties and perused the material on record as well as the impugned award.

The learned Standing Counsel contended that the workman did not work for 240 days in the calendar year. On the other hand, the learned counsel for respondent no.3 has contended that the respondent no.3 had worked for 240 days in a calendar year. On the application of the workman for requisition of the muster roll the petitioner produced the muster roll for the period 02.01.1984 to 31.12.1985 which shows that the respondent no.3 had completed 240 days in a calendar year.

The daily wager also falls within the definition of the workman. It is settled position of law that a daily wager is also a workman within the meaning of U.P.Industrial Disputes Act,1947 as held by this Court in case of **“State of U.P. Vs Presiding Officer, Labour Court and others reported in (2003) F.L.R. page 317”).**

I have perused the evidence discussed by the Labour Court. The Labour Court while relying the admissible evidence

held that the respondent no.3 had completed 240 days in a calendar year. Furthermore, no retrenchment allowance was given to him, as such, there was violation of provision of Section 6N of U.P. Industrial Disputes Act. 1947.

It is settled law that in case a termination order is passed without following the provisions of Section 6N of the Industrial Disputes Act, the termination order is null and void. Hence it is proved that the relationship of master and servant in this case does not snap. Therefore, the Labour Court has rightly ordered for reinstatement of respondent no.3 I do not find any infirmity for perversity in the award of the Labour Court.

The findings recorded by the Labour Court are the findings of fact and does not call for any interference. However, in my opinion, 50% back wages as awarded by the Labour Court are excessive and it should be reduced. Therefore, it is provided that the workman shall not be paid any back wages.

The writ petition is partly allowed. The workman/respondent no.3 shall not be paid any back wages.
No order as to costs.

(P.C. Verma, J)

Dated: 27.09.2005.
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